

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

JULIO CESAR AVALOS CERPAS,

Movant,

v.

UNITED STATES OF AMERICA,

Respondent.

CRIMINAL ACTION NO.
1:07-CR-0279-33-CAP

CIVIL ACTION NO.
1:14-CV-1880-CAP

ORDER

This action is before the court on the magistrate judge's report and recommendation ("R&R") [Doc. No. 2094] and the movant's objections [Doc. No. 2099].

The magistrate judge recommended dismissal of the movant's § 2255 motion as untimely. The movant objected arguing that, because the grounds he raised in the motion are based upon a new rule of constitutional law, *Alleyne v. United States*, the statute of limitations begins running from the date of the *Alleyne* decision which was June 17, 2013. However, in order for *Alleyne* to render the movant's § 2255 motion timely under § 2255(f)(3), it must be retroactive to cases on collateral review. See *Dodd v. United States*, 545 U.S. 353, 358 (2005). The Supreme Court did not

declare that the new rule in *Alleyne* is retroactive on collateral review, nor is it likely to do so. *Jeanty v. Warden, FCI-Miami*, No. 13-14931, 2014 WL 3411144, *2 (11th Cir. July 15, 2014). Therefore, § 2255 (f)(3) is inapplicable.

The R&R [Doc. No. 2094] is adopted as the order and opinion of this court.

SO ORDERED, this 21st day of July, 2014.

/s/ Charles A. Pannell, Jr.
CHARLES A. PANNELL JR.
United States District Judge